

FILED

United States District Court  
Northern District of Alabama  
Southern Division

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

Marble Top, Inc.,

Plaintiff(s),

vs.

Exotex Corporation, Inc., et al.,

Defendant(s).

CV-96-N-1165-S

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ble Top - Exotex Corporation

(Equitable Subordination).wpd

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JUN 5 1998

**Memorandum of Decision**

The plaintiff's claim for breach of contract was tried to a jury beginning on April 22, 1998. On April 27 the jury rendered a verdict on that claim in favor of the defendants and against the plaintiff. The court now has for consideration the plaintiff's cause of action based upon a claim of equitable subordination. Under this claim, the plaintiff claims that because the defendants, including Ronald L. Brewer, violated their fiduciary duties to the limited partnership, the plaintiff is entitled to the return of its capital contribution to the partnership before debts owed by the partnership to the general partner are paid.

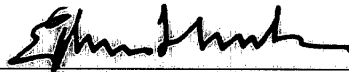
The plaintiff has cited the court to no controlling or persuasive authority that would authorize the court to grant the requested relief. Moreover, the court has been unable to locate any Alabama case that would authorize relief on the evidence adduced at the trial.<sup>1</sup> In any event, the evidence at trial was clear that the conduct of the defendants was entirely consistent with their obligations under the terms of the Partnership Agreement and related documents.

<sup>1</sup>Though the contract in question was probably executed in Louisiana and the property owned by the partnership was in Wyoming, the parties by agreement tried the case under Alabama law.

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For these reasons, the court will enter judgment against the plaintiff on this issue. Based on the verdict of the jury, the court will enter judgment against the plaintiff on the breach of contract claim. The action will be dismissed with prejudice and costs will be taxed against the plaintiff and in favor of the defendants.

It is so ordered, this 5<sup>th</sup> day of June, 1998.

A handwritten signature in black ink, appearing to read 'Edwin L. Nelson', written over a horizontal line.

Edwin L. Nelson  
United States District Judge